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February 6, 2012

## Re: *Appleton Papers Inc., et al. v. George A. Whiting Paper Co., et al.*, 08-cv-16

Dear Judge Griesbach:

We are reluctant to send another letter in advance of Thursday's telephone conference. However, we learned at the end of the day on Friday that Defendants' list of intended trial exhibits includes approximately 10,000 pages of documents that were never previously produced to Plaintiffs. We thus now face the prospect of cross-examining witnesses that we have never seen (let alone deposed) concerning voluminous documents that we only just received. This sort of trial by ambush is, we submit, contrary to the letter and spirit of the Federal rules and the pretrial procedures established by this Court.

Defendants' purported justification that their late disclosures are necessitated by Plaintiffs' refusal to stipulate to supposedly incontestable facts is simply untrue. Plaintiffs agreed to well over 100 stipulations related to the costs that Defendants are seeking from Plaintiffs, in addition to dozens of arranger and insurance stipulations. Some of the stipulations required several rounds of negotiations and review of supporting documentation. Plaintiffs considered in good faith but ultimately did not agree to certain stipulations related to costs that Defendants are not even trying to recover from Plaintiffs at the upcoming trial (just as Defendants did not agree to certain stipulations proposed by Plaintiffs).

In any event, a failure to achieve fact stipulations cannot justify Defendants' wholesale failure to disclose people with relevant knowledge and thousands of pages of documents in their possession during discovery. It is in the hope that we can

avoid an impairment of our due process rights that we have brought this matter, and the latest developments, to the Court's attention in advance of Thursday's conference.

Respectfully submitted,



Darin P. McAtee

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